

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:)	
)	
MARTHA EWELL)	DOCKET NO. 81-74

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On November 12, 1981, the Vermont State Employees' Association ("VSEA") filed a grievance with the Vermont Labor Relations Board on behalf of Martha Ewell ("Grievant"). VSEA alleged various comments in Grievant's annual performance evaluation made by her supervisor violated the collective bargaining agreement between the State and VSEA in that the comments adversely affected Grievant's performance rating and the purported work deficiencies referred to were not called to Grievant's attention by her supervisor during the rating period.

A hearing was held before the full Board on April 1, 1982. Michael R. Zimmerman, Staff Attorney, represented VSEA. Scott Cameron, Assistant Attorney General, represented the State. At the hearing, VSEA amended its petition to further grieve a comment made in the performance evaluation relative to Grievant's supervisory responsibilities.

Subsequent to the hearing, upon agreement of the parties, the State submitted a letter from Paul Hennessey, Grievant's supervisor. The parties agreed the Board could accept the substance of the letter as the testimony Hennessey would have given had he appeared at the hearing. The Board accepts the letter for that purpose.

Requested Findings of Fact and Memoranda of Law were filed by VSEA and the State on April 16 and 21, 1982, respectively.

FINDINGS OF FACT

1. At all times relevant to this grievance, Grievant was employed as a Research Assistant, Pay Scale 11, at the Department of Social Welfare, and was covered by the July 1, 1979 - June 30, 1981, collective bargaining Agreement between VSEA and the State covering the Non-Management Unit. The position of Research Assistant involved the preparation of statistics (Grievant's Exhibit 1).

2. Grievant's working hours were from 7:45 a.m. to 4:30 p.m., Monday through Friday, and her immediate supervisor was Paul K. Hennessey, Assistant Director of Income Maintenance.

3. State supervisors conduct annual performance evaluations of each employee under their supervision. The evaluation report form consists of a variety of factors. The employee is given a numerical rating in each factor, and the supervisor is also given an opportunity to make comments about the employee's performance relative to each of the factors. The employee is then given an overall performance rating for the period. The overall rating is not determined by a numerical average of the ratings given the employee in each of the factors as varying degrees of importance placed on those factors make that impossible. The overall rating represents a composite of job performance in relation to the objectives and standards for the position (Grievant's Exhibit 3).

4. Grievant was evaluated for the period March 4, 1980 to March 3, 1981. That is the rating period relevant to this grievance.

5. As a part of her duties as Research Assistant, Grievant was required to supervise the work of a Typist B, whose working hours were from 7:00 a.m. to 3:30 p.m. Because that employee's work schedule did

not altogether coincide with Grievant's work schedule, that employee was effectively unsupervised for 45 minutes (ie., from 7:00 a.m. to 7:45 a.m.) each morning.

6. On one occasion during the rating period, Hennessey spoke to Grievant about the Typist B, stating that when he came into the office that day, the Typist B was chatting with another employee, and was not working. Hennessey told Grievant to handle the situation. Grievant did so by speaking with the Typist B, and told her not to let it happen again. The incident never repeated itself, and there were no other occasions on which Hennessey spoke to Grievant about the Typist B's performance.

7. Even though it was not part of her job description, Grievant voluntarily made coffee for employees in her office and administered the coffee fund. The coffee-making equipment and supplies were maintained in Grievant's office.

8. In February, 1981, Hennessey complained to Grievant there was too much noise around the coffee pot area, and told her something would have to be done about it. Hennessey asked Grievant to suggest methods of reducing the noise. Grievant assumed she was being blamed for the noise and became defensive. Hennessey told Grievant he was not blaming her.

9. The following morning Grievant came into the office early and moved the coffee machine from her office to the hallway outside her office. The funds for the coffee operation were brought into Hennessey's office and left there by Grievant. When the other employees arrived at work that day and found the coffee machine had been moved, they were

angry and upset. Hennessey discussed the coffee change when he came into work that morning with Grievant and told her she had "overreacted" to his complaints about too much noise at the coffee machine.

10. At some time during the rating period, Hennessey spoke to Grievant about lowering the volume of the radio because the noise was too loud and it was bothering other employees.

11. On July 20, 1981, Grievant received a performance evaluation report, prepared by Hennessey, covering the period March 4, 1980, to March 3, 1981. Grievant received ratings of 3 ("consistently meets job requirements/standards") and 4 ("frequently exceeds job requirements/standards") in the various factors. She received an overall rating of 3 (Grievant's Exhibit 3).

12. Among the comments Hennessey wrote in support of his various ratings are the following:

Summary Comments: ...Her relationship with employees of the Division tends to be moody and could be improved at times.

- A-3 The volume of her radio could be lowered to be less distracting to others.
- A-7 Tends to be moody
- B-2 Could try to better schedule tasks for employees using flex time during the early part of the day.

(Grievant's Exhibit 3)

13. When she received the performance evaluation, Grievant took her radio home. Hennessey told her this response was an overreaction.

14. When she received the performance evaluation, Grievant did not know why Hennessey had written she was "moody"; since at no time during the rating period had Hennessey told her she was moody.

15. Grievant filed a Step I grievance over the evaluation, grieving the comments relating to moodiness and the comments in the above-mentioned B-2. Grievant did not grieve the comment in A-3 relative to the volume of her radio.

16. At the Step I meeting, Hennessey told Grievant the "moody" comments related to the coffee-pot incident.

17. As a result of a Step I meeting on August 4, 1981, Hennessey declined to change the performance evaluation insofar as it commented on Grievant's purported moodiness, but did agree to change the comment in support of factor B-2, as follows:

Martha needs to be more attentive to achieving optimum use of clerical staff. For example, an employee, unsupervised during the first hour of work, was not always busy. It was Martha's responsibility to see that the employee had work assigned and was actively doing it. This problem was corrected when brought to Martha's attention.

(Grievant's Exhibit 4)

18. The pertinent contract language applicable to this matter is the following portion of Article XIII of the Agreement.

Employees shall be notified of their performance evaluation by their supervisors. One copy of the rating form shall be provided to the employee and one copy shall be retained by the agency.

The immediate supervisor shall discuss the rating with the employee, calling attention to particular areas of performance and when necessary pointing out specific ways in which performance may be improved. During the rating year, immediate supervisors shall call employees' attention to work deficiencies which may adversely affect a rating.

The employee copy of the rating shall constitute official notice to the employee of his rating.

19. In his Step III answer denying the grievance, Thomas Ball, Director of Employee Relations, stated Grievant's rating was not "adversely affected" by the grievant's comments because she was given a "3" rating.

OPINION

At dispute here is whether the State violated Article XIII of the Agreement, specifically whether Grievant's supervisor, Paul Hennessey, called Grievant's attention to work deficiencies which adversely affected her performance rating.

The initial question is whether Grievant's performance evaluation was adverse. At the Step III level, the State argued Grievant's evaluation was not adversely affected by any comments because she had a "3" rating - "consistently meets job requirements/standards". To accept the State's argument would mean an employee could be "surprised" by an evaluation noting various work deficiencies not called to his/her attention during the rating year, and not be able to grieve it, as long as s/he got a "3" rating.

We do not believe the State's argument is consistent with the language in Article XIII of the Agreement which provides:

During the rating year, immediate supervisors shall call the employees' attention to work deficiencies which may adversely affect a rating.

The State apparently is restricting the meaning of "rating" to the numerical rating an employee receives. We believe a closer reading of the Agreement indicates a broader meaning for "rating" is intended. Other relevant provisions of Article XIII, provide:

Employees shall be notified of their performance evaluation by their supervisors. One copy of the rating form shall be provided to the employee... The employee copy of the rating shall constitute official notice to the employee of his rating (emphasis added).

An employee is not given a copy of just his numerical rating, but a copy of the entire completed rating form. Accordingly, a "rating" refers to the entire substance of a completed performance evaluation form. Given this language, we believe the rating supervisor is required to call the employee's attention to any work deficiencies which may be noted on the annual performance evaluation.

We also reject the argument that an employee is not 'adversely affected' by a "3" rating. A "3" rating may have an adverse effect on an employee's chances of promotion and other career advancements, since such rewards may go to those with a "4" or "5" rating, and an employee may legitimately be concerned over anything less.

In the case at hand, we assume Grievant's rating concerning moodiness and supervisory performance was adverse. The comments could conceivably hinder her opportunities for promotion, transfer, or employment outside State government. We, accordingly, must determine if they are justified.

Grievant is contesting the following three comments:

1. Her relationship with employees of the Division tends to be moody and could be improved at times.
2. Tends to be moody.
3. Martha needs to be more attentive to achieving optimum use of clerical staff. For example, an employee, unsupervised during the first hour of work, was not always busy. It was Martha's responsibility to see that the employee had work assigned and was actively doing it. This problem was corrected when brought to Martha's attention.

The comments relative to Grievant's moodiness violate the contractual language of Article XIII in two regards. First, the contract clearly implies that only deficiencies relating to an employee's work performance may be addressed in performance evaluations. Here, Grievant was called "moody" with no explanation how her purported moodiness constituted a deficiency in her work performance. We believe the inclusion of such a disparaging, subjective comment on a performance evaluation is proper only if specific instances explaining how it adversely affected the employee's work performance are also included.

It is clearly valid to indicate on performance evaluations personality traits which impinge on job performance. Employees who, for example, are frequently morose, prone to unjustified anger, withdrawn from other employees, or subject to mood swings, or employees who react adversely to criticism, or generate hostility in others, could clearly upset the work force and impede the functioning of a workplace. A rater is required only to describe specific instances explaining how the personality traits adversely impacted on job performance. Absent any explanatory comments, the use of the term "moody" here is imprecise, and we think of no utility in the rating.

The second way in which the "moodiness" comments violated the contract was Paul Hennessey's failure to discuss "moodiness" as a work deficiency with Grievant. He did tell her she "overreacted" to his complaints by moving the coffee machine from her office and turning the coffee fund over to him. Given no evidence of further discussion on the issue, we fail to see how this "overreaction" comment constituted calling attention to a work deficiency. Grievant was relinquishing responsibilities

she had voluntarily assumed and which formed no part of her job duties. Conceivably, Grievant's actions could have impeded the functioning of her office, but Hennessey did not discuss her actions in that light. Hennessey also told Grievant she was overreacting when she took her radio home subsequent to a comment on her performance evaluation that the volume of her radio could be lowered to be less distracting to others. However, this "overreaction" comment was made after the rating period and formed no part in the "moodiness" comments made by Hennessey.

Accordingly, the requirements of Article XIII of the Agreement have not been met, and comments relating to Grievant's moodiness should be stricken from the evaluation.

However, the comments relating to the need for Grievant to be more attentive to achieving optimum use of clerical staff meet contractual requirements. The comments directly address a work deficiency, a deficiency which was pointed out to Grievant during the rating period and, as the comments indicate, was corrected.

Our ruling here should not be construed to provide for "sanitized" ratings. It is not our intent to strip raters of their ability to give their honest opinion of the performance of those working for them, including personality traits where valid. But, when personality traits are a factor, raters must undergo the discipline of thought to connect the specific adverse trait with a deficit in work performance.

ORDER

Now, therefore, based on the foregoing findings of fact and for all the foregoing reasons, it is hereby ORDERED:


The grievance of Martha Ewell is ALLOWED to the extent that the comments on her performance evaluation for the period March 4, 1980 - March 3, 1981, relating to her moodiness shall be removed; and DENIED to the extent that the comments relating to her need to be more attentive to achieving optimum use of clerical staff shall be retained.

Dated this 27th day of May, 1982, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD


Kimberly B. Cheney, Chairman


William G. Kemsley, Sr.


James S. Gilson